

**United States District Court, Northern District of Illinois**

<b>Name of Assigned Judge or Magistrate Judge</b>	George M. Marovich	<b>Sitting Judge if Other than Assigned Judge</b>	
<b>CASE NUMBER</b>	10 C 2125	<b>DATE</b>	3/27/13
<b>CASE TITLE</b>	Guarantee Trust Life Ins. Co. v. American Medical and Life Ins. Co.		

**DOCKET ENTRY TEXT:**

Defendant American Medical and Life Ins. Co.’s motion [148] for partial summary judgment is denied. Plaintiff Guarantee Trust Life’s motion [181] to strike and to file surreply is denied.

■ [ For further details see text below.]

Docketing to mail notices.

**STATEMENT**

Defendant American Medical Life Ins. (“AMLI”) has moved for partial summary judgment on its cross-claims against plaintiff Guarantee Trust Life Ins. (“GTL”). GTL has filed a motion to strike portions of AMLI’s response to GTL’s statement of facts. Although the Court agrees that portions do not comply with Local Rule 56.1, the Court will not take the trouble to strike that which it can simply ignore. GTL also requests leave to file a surreply on the grounds that AMLI made a new argument in its reply brief. Arguments that are first raised in a reply brief are waived, so GTL has no need to file a surreply. GTL’s motion is denied.

Next, AMLI, in its motion for summary judgment, seeks a declaration that an insurance contract (that the parties refer to as the “GTL-as-reinsurer” agreement) is enforceable. Although GTL did not sign the agreement, AMLI argues that GTL is still bound pursuant to “the well-settled principle of contract law that a party may, by his acts and conduct, assent to contract terms and become bound by them even though he has not signed the contract, if it is clear that his conduct relates to the specific contract in question.” *All American Roofing, Inc. v. Zurich Amer. Ins. Co.*, 934 N.E.2d 679, 693 (Ill.App.Ct. 2010).

Summary judgment should be granted “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(a). Here, although AMLI has put forth evidence of facts from which a reasonable jury could conclude that the agreement is enforceable, many of those facts are disputed by GTI. Accordingly, summary judgment is not appropriate. Thus, AMLI’s motion for summary judgment is denied.